Financial
Intelligence Centre

PUBLIC COMPLIANCE COMMUNICATION

PUBLIC COMPLIANCE COMMUNICATION No. 48 (PCC 48)

ON CERTAIN LIFE INSURANCE BUSINESS ISSUES INCLUDING CUSTOMER DUE DILIGENCE AND UNDERSTANDING OF RISK IN RELATION TO THEIR CLIENT IN TERMS OF THE FINANCIAL INTELLIGENCE CENTRE ACT, 2001 (ACT 38 OF 2001)

PCC SUMMARY

Accountable institutions who offer life insurance products and who provide advice and/or intermediary services in relation to life insurance products must understand the money laundering and terrorist financing (ML/TF) risks posed by their clients, and must perform customer due diligence (CDD) accordingly, when entering into a business relationship and or single transaction.

In understanding the ML/TF risks that the client may pose to the accountable institution, the accountable institution must take into account the ML/TF risk considerations relating to the nominated beneficiary.

The nominated beneficiary is the accountable institution's client when the beneficiary has a vested claim in the life insurance product. The payment of policy proceeds to the nominated beneficiary is the conclusion of a single transaction.

Accountable institutions are obliged to provide information relating to suspicious and unusual transaction reports (STRs) submitted to the Financial Intelligence Centre (Centre) in terms of section 29 of the Financial Intelligence Centre Act, 2001 (Act 38 of 2001) (FIC Act), to their supervisory body following the request of their supervisory body during an inspection determining compliance with the FIC Act, in terms of section 45B of the FIC Act.

DISCLAIMER

The publication of a PCC concerning any particular issue, as with other forms of guidance, which the Centre provides, does not relieve the user of the guidance from the responsibility to exercise their own skill and care in relation to the user's legal position. The Centre accepts no liability for any loss suffered as a result of reliance on this publication.

OBJECTIVE

The objective of this PCC is to provide clarity on three (3) self-standing issues relating to The risk assessment of an accountable institution in relation to their clients, the implications of the naming of a nominated beneficiary to a life insurance product, and the providing of STR and related information to a supervisory body.

1. INTRODUCTION

1.1 The purpose of this PCC is to clarify certain practical application issues relating to FIC Act compliance in the context of accountable institutions that offer life insurance products and accountable institutions who provide advice and/or intermediary services in relation to life insurance products.

1.2 This PCC is to be applied where an individual policy holder nominates a beneficiary and/or amends the beneficiary(ies) nomination, during the course of the business relationship, to a life insurance product.

1.3 This PCC contains three parts will cover the following areas:

Part A - Risk assessment of an accountable institution's client

- The risk identification of a client
- The timing of assigning a risk rating and CDD to a client.

Part B - The FIC Act obligations pursuant to the naming of beneficiaries of a life insurance product

- ML/TF obligations relating to the beneficiary/ies of a life insurance product
- When the nominated beneficiary is considered to be a client of the life insurer.

Part C - Accountable institutions' obligations in respect of providing information relating to suspicious and unusual transactions, in terms of section 29 of the FIC Act to a supervisory body.

PART A - RISK ASSESSMENT OF ACCOUNTABLE INSTITUTIONS' CLIENTS

2. The risk identification of a client

2.1. Accountable institutions are cautioned to not limit their understanding of the risks clients may pose to a single factor that is perceived to be low risk by the accountable institution. It is not the intention of the risk-based approach to routinely assign the same level of risk to all clients based on a single indicator (such as product risk).

2.2. The FIC's Guidance Note 7 lists several indicators and questions that accountable institutions can use to determine possible risks associated with clients.

2.3. Should the accountable institution consider a life insurance policy to be a low risk product, the accountable institution must nonetheless take into consideration all other indicators related to the client. These include, among other factors, as the client's geographic location, distribution channels, if the client is a foreign prominent public official (FPPO) or domestic prominent influential person (DPIP), and if there is adverse media publicity on the client. Once all these unique factors have been considered, only then can the accountable institution assign ML/TF risks to its relationship with the client.

2.4. Each risk indicator may carry a different weighting in relation to the level of ML/TF risk to which the accountable institution may be exposed. The accountable institution should consider such weighting in determining the overall ML/TF risk associated to the client. Where an indicator (such as product risk) has a substantial weighting, the accountable institution must be able to clearly demonstrate how the risk weighting is used to determine the overall ML/TF risk.

3. Timing of assigning a risk rating and CDD of a client

3.1. The person with whom the accountable institution establishes a business relationship and/or enters into a single transaction with, is the accountable institution's client.

3.2. Whether entering into a business relationship or single transaction with a client, the accountable institution is required to have an understanding of the risk associated with the client in order to determine the required CDD measures that must be applied in accordance with the accountable institutions obligation in terms of the FIC Act and in accordance with its risk management and compliance programme (RMCP).

3.3. Such a risk determination (or risk rating of a client) must be completed as part of the client onboarding process and prior to the client acceptance. Thereafter, risk must be reassessed as and when client's details change in accordance with the accountable institution's ongoing due diligence processes in terms of the FIC Act as well as its RMCP. The rating of the client cannot be deferred to a later time.

3.4. The accountable institution may not receive any funds (such as premium payments or payments received via debit order) or make any pay outs (such as the pay out of the policy premium), until such time as the ML/TF risk of the client has been identified and the relevant client CDD has been obtained and completed.

PART B - THE FIC ACT OBLIGATIONS PURSUANT TO THE NAMING OF BENEFICIARIES OF A LIFE INSURANCE PRODUCT

4. ML/TF risk considerations relating to beneficiaries of life insurance policies

4.1 An accountable institution must understand the ML/TF risks associated with their clients. Doing so will allow the accountable institution to manage the ML/TF risk accordingly, by applying the relevant level of CDD measures and client monitoring in terms of their RMCP.

4.2 The information about the nominated beneficiary is part of the information relating to the client that needs to be assessed to understand client risk. Therefore, an accountable institution should have sufficient knowledge of the nominated beneficiary at any given time, so as to inform the understanding of ML/TF risk that is posed by the client. In doing so, it is not the Centre's expectation that CDD be conducted on the beneficiary at nomination.

4.3 Following from paragraph 3.3, the accountable institution must reassess the risk relating to its clients at various points during the business relationship. A trigger for reassessment may be the change of a nominated beneficiary on the client's policy.

4.4 As discussed below (in Part C), the beneficiary becomes the client of the insurer at the time when their rights in the insurance benefit vest. Therefore, accountable institutions should also have an understanding of the ML/TF risks that may foreseeably occur with this beneficiary. As such, accountable institutions must understand the risk that the nominated beneficiary may pose to the accountable institution so that they are aware of the necessary mitigating measures and controls that must be in place at the time when the insurance benefit is claimed.

4.5 ML/TF risk considerations regarding the nominated beneficiary that impacts the overall risk of the client/potential client include that:

4.5.1 The beneficiary may be a sanctioned person according to the South African sanctions regimes (See Guidance Note 6A and PCC 44 for further information regarding the scrutinising of information in meeting the financial sanctions obligation);

4.5.2 The beneficiary may be a FPPO as envisaged in section 21F of the FIC Act, or a DPIP in terms of section 21G of the FIC Act;

4.5.3 The beneficiary may be a known criminal;

4.5.4 The beneficiary arrangements may be used for purposes of fronting to facilitate the movement of funds through a life insurance policy.

Beneficiary listed as a sanctioned person or entity

4.6 Section 4 of the Protection Of Constitutional Democracy Against Terrorist And Related Activities Act, 2004 (Act 33 of 2004) (POCDATARA Act) and section 26B(2) of the FIC Act prohibits any person from dealing with property that is associated with or making property available to any persons listed according to the South African sanctions regimes. (Kindly refer to Guidance Note 6A and PCC 44 regarding the freezing of funds).

4.7 Should the accountable institution identify that a nominated beneficiary is a sanctioned person as listed in the South African sanctions regimes, it would be cautioned not to continue with such an arrangement as at the pay out stage it would not be in a position to lawfully honour such a payment or arrangement.

Example

Person X holds a life insurance product with Company A. Person X nominates person Y as the beneficiary. Person X passes away, and the claim for policy proceeds to be paid to person Y is initiated. Company A screens person Y and identifies Person Y as a person listed on a sanctions list (per section 25 of the POCDATARA Act and section 26 of the FIC Act).

Company A would be required to freeze such funds and may not lawfully proceed with this payout as it would be a contravention of section 4 of the POCDATARA Act and section 6B of the FIC Act

Beneficiary is a foreign prominent public official or a domestic prominent influential person

4.8 As discussed in Guidance Note 7, the status of a person in relation to their political influence may have an impact on the ML/TF risk they pose to the accountable institution.

4.9 In an instance where the nominated beneficiary to a life insurance policy is a FPPO or a DPIP, the accountable institution should consider whether the client is a family member or a known close associate of the beneficiary in so far as determined in section 21H of the FIC Act. This includes where the ultimate beneficial owner of a nominated beneficiary (where the beneficiary is a legal person) is a FPPO or a DPIP.

4.10 If it is determined that the client is a family member or a known close associate of the nominated beneficiary who is either a FPPO or a DPIP, the accountable institution's understanding of the ML/TF risk and the associated CDD of the client would need to be aligned in relation to sections 21F and 21G of the FIC Act.

4.11 Where the client is a family member or known close associate to a nominated beneficiary who is a FPPO or a DPIP that is considered a high risk, the accountable institution would be required to obtain enhanced due diligence for the client, establish the source of wealth and funds of the client and obtain senior management approval to establish the business relationship.

4.12 Where the nominated beneficiary who is a FPPO or a DPIP is not deemed to be a family member or known close associate with the client, the accountable institution should consider and understand the risk associated with such an arrangement.

Reporting of a suspicious and unusual transaction to the Centre

4.13 It may be a consideration of the accountable institution to determine if the nominating of such a beneficiary could amount to the business being used in any way for money laundering, or the commission of an offence in either scenario described in paragraph 4.5 above. Such suspicion would be required to be reported to the Centre in terms of section 29 of the FIC Act.

5. When is the nominated beneficiary considered as a client of the life insurer?

5.1 Clients are given an option to nominate beneficiaries to a life insurance policy. Such beneficiaries would therefore be the recipient of the policy proceeds once the insured event occurs, and the proceeds/benefits are claimed.

5.2 It is the Centre's view that when a client nominates a beneficiary, this beneficiary does not, at the stage of nomination, become the client of the accountable institution.

5.3 When an accountable institution makes a pay out of a life insurance policy's proceeds, they are entering into a single transaction with the receiver of the funds. The beneficiary becomes the client of the accountable institution, and the resulting FIC Act obligations (Kindly see Part A above) come into effect.

5.4 The accountable institutions' clients would therefore be both the life insurance policy holder(s), and the beneficiary where an insured event has occurred, and the proceeds/benefits are claimed or become payable in terms of the life insurance policy.

5.5 The CDD provisions apply as per the entity type for the client (previously nominated beneficiary) and must be aligned with the provisions of sections 21 and 21B of the FIC Act accordingly (Kindly refer to Guidance Note 7 for further explanation on CDD obligations of a client).

PART C – SECTION 29 OF THE FIC ACT

6. ACCOUNTABLE INSTITUTIONS' OBLIGATIONS IN RESPECT OF PROVIDING INFORMATION TO A SUPERVISORY BODY, RELATING TO SUSPICIOUS AND UNUSUAL TRANSACTIONS IN TERMS OF SECTION 29 OF THE FIC ACT

6.1. Accountable institutions have an obligation to provide their supervisory body with a copy of a report, related facts or information regarding the content of a report as submitted to the Centre in terms of section 29 of the FIC Act when formally requested to do so in preparation for or during an inspection in terms of section 45B(2A) of the FIC Act for the purposes of determining FIC Act compliance.

6.2. Reference is made to PCC 42 relating to the disclosure of information regarding the contents of section 29 reports to a supervisory body.

7. ENQUIRIES

For any further enquiries regarding this PCC 48, please contact the Compliance Contact Centre on (012) 641 6000, or a query can be logged at
http://www.fic.gov.za/Secure/Queries.aspx

Issued By:

The Director

Financial Intelligence Centre

31 March 2020

Annexure A - 10.12 and 10.13 of the FATF Methodology

http://www.fatfgafi.org/media/fatf/documents/methodology/FATF%20Methodology%2022%20Feb%202013.pdf

CDD for Beneficiaries of Life Insurance Policies

10.12 In addition to the CDD measures required for the customer and the beneficial owner, financial institutions should be required to conduct the following CDD measures on the beneficiary of life insurance and other investment related insurance policies, as soon as the beneficiary is identified or designated:

(a) For a beneficiary that is identified as specifically named natural or legal persons or legal arrangements – taking the name of the person;

(b) For a beneficiary that is designated by characteristics or by class or by other means – obtaining sufficient information concerning the beneficiary to satisfy the financial institution that it will be able to establish the identity of the beneficiary at the time of the pay-out;

(c) In both instances as indicated above – the verification of the identity of the beneficiary should occur at the time of the pay out.

10.13 Financial institutions should be required to include the beneficiary of a life insurance policy as a relevant risk factor in determining whether enhanced CDD measures are applicable. If the financial institution determines that a beneficiary who is a legal person or a legal arrangement presents a higher risk, it should be required to take enhanced measures which should include reasonable measures to identify and verify the identity of the beneficial owner of the beneficiary, at the time of pay out.

Annexure B - 12.4 of the FATF Methodology

http://www.fatf-gafi.org/media/fatf/documents/methodology/FATF%20Methodology%2022%20Feb%202013.pdf

12.4 In relation to life insurance policies, financial institutions should be required to take reasonable measures to determine whether the beneficiaries and/or, where required, the beneficial owner of the beneficiary, are PEPs. This should occur, at the latest, at the time of the pay-out. Where higher risks are identified, financial institutions should be required to inform senior management before the pay-out of the policy proceeds, to conduct enhanced scrutiny on the whole business relationship with the policyholder, and to consider making a suspicious transaction report.